IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 250 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT CO.OP.MILK PRODUCERS UNION LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

NOTICE SERVED for Petitioner

MR BB NAIK for MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee, the following four questions of law arising out of I.T.A. No. 994/Ahd/84 have been referred to this Court under the provisions of sec. 256(1) of the Income-tax Act, 1961, by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A'.

1 Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that order passed by the ITO is according to the provisions of law and not barred by the limitation?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that contribution made as per the provisions of sec. 69 of the Gujarat Co-operative Societies Act is not deductible in computation of total income?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that betterment charges amounting to Rs. 13,016/- paid to Anand Municipal Corporation is the expenditure of capital nature?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that roads is a part of 'Building' and not 'Plant' and therefore deduction of 40% as claimed u/s 80T is not admissible?

2. Learned advocate Shri J.P. Shah has appeared for the applicant whereas learned advocate B.B. Naik has appeared for the respondent.

3. At the time of hearing of this reference, learned advocate Shri Shah has not pressed for question no. 1 and therefore the said question is not being answered.

4. The learned advocates have submitted that all the remaining questions, which have been referred to this Court, have been decided during the pendency of this reference.

5. So far as the second question is concerned, it has been submitted that the said question has been answered in case of CIT v. Kaira District Co-operative Milk Producers' Union Ltd., 247 ITR 314. The question has been answered in the negative i.e. in favour of the

assessee and against the revenue. Thus, we also answer the said question in the negative, i.e. in favour of the assessee and against the revenue.

6. So far as the third question is concerned, it has been submitted that the said question has been answered in case of Arvind Mills Ltd. v. CIT, 197 ITR 422. In view of the said judgment, we answer the said question in the affirmative i.e. in favour of the revenue and against the assessee.

7. So far as the fourth question is concerned, it has been covered by the judgment delivered in case of CIT v. Gwalior Rayon Silk Mfg. Co. Ltd., 196 ITR 149. In view of the said judgment, the question which has been referred to this Court is answered in the affirmative i.e.. for the revenue and against the assessee.

The reference thus stands disposed of with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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